IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 5086 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NAIKNAVARE ASSOCIATES PROMOTERS & BUILDERS PVT.LTD & 2 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR PR ABICHANDANI for Applicant(s) : 1 - 3.
MR MR MENGDE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
NANAVATI & NANAVATI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 25/07/2007

ORAL JUDGMENT

1. Present application has been filed under section 482 of the Cr.P.C. by the applicants – original accused Nos.1, 4 and 5 for an appropriate order

quashing and setting aside Criminal Complaint No.58/2004 – Inquiry Case No. 45/2005 subsequently numbered as Criminal Case No. 25780/2006 pending in the Court of learned JMFC, First Court, Surat.

2. A criminal complaint has been filed against the applicants – original accused Nos.1, 4 and 5 and other accused in the Court of learned JMFC, First Court, Surat by the respondent No.2 – original complainant for the offences under sections 138 and 141 of the Negotiable Instrument Act, 1881 (hereinafter referred to as “the N.I.Act” for short) and under sections 406, 420, 114 and 120(B) of the I.P.C. It is alleged in the complaint that applicant No.1 herein – original accused No.1 is a company who has issued cheque for an amount of Rs.11,50,000/- in favour of the respondent No.2 – original complainant and the original accused Nos.2 to 6 are the directors of the said company and when said cheque was presented with the bank, the same is dishonoured and thereafter, statutory

notice was served and after receipt of the said notice, the same has not been complied with and the amount in question has not been paid and therefore, the aforesaid complaint has been filed. That the trial Court has issued summons upon the accused for the offence under section 138 of the N.I.Act on 4.7.2006. Being aggrieved and dissatisfied with the same, the applicants – original accused Nos.1, 4 and 5 have preferred present application under section 482 of the Cr.P.C. to quash and set aside the criminal complaint in question.

3. Shri Abhichandani, learned advocate appearing for the applicants has submitted that no offence has been committed by the applicants as alleged under section 138 of the N.I.Act and without express consent of the applicant No.1 – company, the cheque was taken by the complainant from the Advocate and the same was deposited behind the back of the present applicant No.1 – company inspite of the fact that the occasion / stage for the payment of the same has not been arisen.

It is submitted that so far as applicant Nos.2 and 3 – original accused Nos.4 and 5 are concerned, they are joined as accused as being directors of the applicant No.1 – company, however, there are no specific averments in the complaint that they were in day to day management and affairs of the company and therefore, they cannot be held vicariously liable under section 141 of the N.I.Act and therefore, it is requested to allow the present application and to quash and set aside the impugned criminal complaint.

4. Shri Devang Nanavati, learned advocate appearing for the respondent No.2 – original complainant has submitted that all the ingredients of section 138 of the N.I.Act are complied with and a specific case is made out against the applicants for the offence under section 138 of the N.I.Act. It is also further submitted by him that the submissions and/or the grounds, which are raised in the present application are the defences of the applicants and they are required

to be considered at the time of trial and the same cannot be a ground for quashing the complaint under section 482 of the Cr.P.C. He has also further submitted that so far as applicant Nos.2 and 3 – original accused Nos. 4 and 5 are concerned, there are specific averments in the complaint to the effect that they were in day to day management and affairs of the applicant No.1 – company and relying upon the decision of the Hon'ble Supreme Court in case of ***N. Rangachari V/s. Bharat Sanchar Nigam Limited*** reported in **AIR 2007 SC 1682**, it is requested to dismiss the present application.

5. Shri M.R.Mengde, learned APP has submitted to pass an appropriate order considering the averments in the complaint.

6. Heard the learned advocates appearing on behalf of the respective parties.

7. At the outset, it is required to be noted that for attracting the provisions and the offence

under section 138 of the N.I.Act what is required to be considered is that, “whether a person / company has issued cheque and the same has been deposited by the person in whose favour the cheque is issued and the same is dishonoured and that the statutory notice is given and within the stipulated time the amount is not paid and within stipulated time limit complaint under section 138 of the N.I.Act is submitted. Considering the facts of the present case, all the ingredients of section 138 of the N.I.Act are satisfied. The applicant No.1 herein – original accused No.1 has issued the cheque in favour of the respondent No.2 for an amount of Rs.11,50,000/-, which was deposited with the bank and the same has been dishonoured and thereafter, statutory notice has been given and within stipulated time limit, the amount of cheque is not paid. Thus, considering above, a prima facie case satisfying the ingredients of section 138 of the N.I.Act is made out. The submissions and the grounds which are raised in the present application are all defences of the

applicants which are required to be considered only at the time of trial. Under the circumstances, the impugned criminal complaint is not required to be quashed and set aside in exercise of the powers under section 482 of the Cr.P.C.

So far as the submissions on behalf of the applicant Nos.2 and 3 – original accused Nos.4 and 5 that they are the directors of the applicant No.1 – original accused No.1 and that there are no specific averments in the complaint that they were in day to day management and affairs of the company and therefore, the impugned criminal complaint is required to be quashed and set aside is concerned, it is an admitted position that the applicant Nos.2 and 3 herein are the directors of the applicant No.1 – company who has issued the cheque in question. In the complaint itself it is specifically mentioned that “Accused No.1 is registered private company and accused Nos.2 to 6 are the directors thereto. Accused Nos.2 to 6 are

concerned and connected with the day to day business and administration of the aforesaid company and are maintaining and operating the bank account of the accused No.1 - company and are liable for the offences as referred hereinabove." Now, considering above, there are specific averments in the complaint that the applicants are concerned and connected with day to day business and administration of the company. Considering above and the decision of the Hon'ble Supreme Court in case of ***N. Rangachari*** (supra), further question as to whether they were in-charge of the affairs of the company at the relevant time or not is required to be adjudged during trial and therefore, the complaint is not liable to be quashed under section 482 of the Cr.P.C.

8. Considering the decision of the Hon'ble Supreme Court in case of ***N. Rangachari*** (supra) and considering the facts of the present case and the averments which are referred to hereinabove, the impugned criminal complaint is not liable to

be quashed in exercise of the powers under section 482 of the Cr.P.C.

9. For the reasons stated above, application fails. Notice discharged.

(M.R.Shah, J.)

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